

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

JOSEPH ALEXANDER PECSI, IV,

Plaintiff,

v.

NILES, CITY OF, et al.,

Defendants,

Hon. Gordon J. Quist

Case No. 1:14-cv-00220

REPORT AND RECOMMENDATION

This matter is before the Court on Plaintiff's Motion for Default Judgment against Defendant Ivery C. Cross, III under Fed.R.Civ.P. 55 (ECF No. 110), which was referred to the undersigned by the Honorable Gordon J. Quist for report and recommendation under 28 U.S.C. §636(b)(1)(B). Ivery C. Cross, III was served with the summons and complaint in this matter on June 6, 2014 (ECF No. 8). Defendant has not filed or served an answer to the complaint or taken such other action as may be permitted by law. Defendant Cross is currently incarcerated by the Michigan Department of Corrections. Default was entered against him by the Court on July 27, 2015 (ECF No. 105), and the pending motion for default judgment was filed on August 17, 2015 (ECF No. 110), including an affidavit that Defendant Ivery C. Cross, III is not an infant, not an incompetent person, and is not in the military service of the United States. (ECF No. 110, PageID.1418).

The undersigned recommends that Plaintiff's Motion for Default Judgment against Defendant Ivery C. Cross, III under Fed.R.Civ.P. 55 (ECF No. 110) be granted in part and

that default judgment be entered as to Defendant Ivery C. Cross, III, jointly and severally. However, the undersigned also recommends that the portion of the motion requesting an evidentiary hearing be conducted pursuant to Fed.R.Civ.P. 55(b)(2) be denied without prejudice.

It is further recommended that the issue of damages be taken up during the trial of this matter if one occurs; however, if the Court grants the objection by Defendants Richard A. Huff and the City of Niles (ECF No.132) to the report and recommendation (ECF No.129) entered on January 21, 2016, regarding Defendants' Motion for Summary Judgment (ECF No. 91) and grants summary judgment as to those defendants, it is recommended that an evidentiary hearing regarding damages to be assessed against Defendant Ivery C. Cross, III be scheduled forthwith.

It is further recommended that this R&R be adopted immediately, subject to change should any timely objections be filed.

Date: March 24, 2016

/s/ Ellen S. Carmody
ELLEN S. CARMODY
U.S. Magistrate Judge

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within 14 days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).